

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

AIJALON WALLACE MCLITTLE,)
)
Plaintiff,)
)
v.) Case No. CIV-04-1043-T
)
R. SWAIN, *et al.*,)
)
Defendants.)

ORDER

Plaintiff, a federal prison appearing *pro se*, brought this action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), alleging the Defendants violated his constitutional rights. The matter was referred to United States Magistrate Judge Bana Roberts for initial proceedings. Defendants filed a motion to dismiss, arguing, in part, that Plaintiff's claims should be dismissed because Plaintiff failed to exhaust his administrative remedies prior to filing suit. On June 23, 2005, Judge Roberts issued a Report and Recommendation in which she recommended that Plaintiff's claims be dismissed for failure to exhaust his administrative remedies. On July 15, 2005, Plaintiff filed an objection to the Report and Recommendation. The matter is at issue.

As stated above, Judge Roberts recommended Plaintiff's claims be dismissed because he failed to exhaust his administrative remedies prior to filing suit. In support of her recommendation, Judge Roberts cited Steele v. Federal Bureau of Prisons, 355 F.3d 1204, 1209 (10th Cir. 2003) and Jernigan v. Stuchell, 304 F.3d 1030, 1032 (10th Cir. 2002).

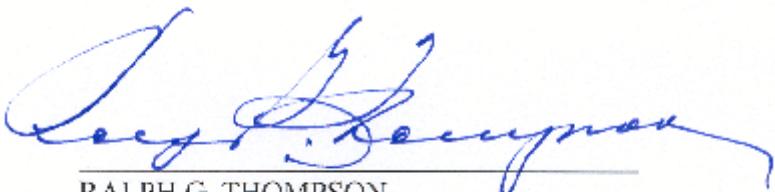
In his objection, Plaintiff argues that he could not exhaust his administrative remedies because he was allegedly denied the forms with which to do so. However, Plaintiff offers no citation to legal authority

demonstrating a futility exception exists with respect to the 42 U.S.C. §1997e(a) exhaustion requirement. Accordingly, for the reasons set forth in the well reasoned Report and Recommendation, the Court dismisses Plaintiff's claims for failure to exhaust his administrative remedies prior to filing suit.

CONCLUSION

The Court ADOPTS Judge Roberts' June 23, 2005, Report and Recommendation in its entirety; GRANTS Defendants' motion to dismiss (Doc. No. 24); and DISMISSES Plaintiff's Complaint without prejudice.

IT IS SO ORDERED this 19th day of July, 2005.



RALPH G. THOMPSON
UNITED STATES DISTRICT JUDGE